UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 10-5695

Edward H. Flint,

Plaintiff-Appellant,

v.

A.C. McKay Chavin, aka A.C. McKay Chavin

Defendant-Appellee.

ORDER - December 14, 2010

Before: Gibbons and Rogers, Circuit Judges; ECONOMUS, District Judge*

Upon consideration of the petition for rehearing filed by the Appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**

Entered by Order of the Court

(s) Leonard Green
Leonard Green, Clerk

* the Honorable Peter C. Economus, United States District Judge for the Northern District of Ohio, sitting by designation

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No.10-5695

Edward H. Flint,

Plaintiff-Appellant,

v.

A.C. McKay Chavin, aka A.C. McKay Chavin

Defendant-Appellee.

On Appeal from the United States District Court for the Western District of Kentcky

FILED - November 18, 2010

Before: Gibbons and Rogers, Circuit Judges; ECONOMUS, District Judge*

Edward H. Flint, a Kentucky resident proceeding, pro se, appeals from a district court order dismissing his civil rights complaint. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(s).

* the Honorable Peter C. Economus, United States District Judge for the Northern District of Ohio, sitting by designation

Seeking monetary and equitable relief, Flint sued Judge A.C. McKay Chauvin of the Jefferson County Circuit Court, in both his individual and official capacities. Flint claimed that the judge violated Flint's constitutional rights during court proceedings in Flint's lawsuit against a condominium association. Flint also alleged that the judge "failed to perform his duty required by the Kentucky Justice System, the Kentucky Supreme Court Rules and laws of the state of Kentucky." Flint also alleged that Chauvin exhibited bias against him because he has sued other Jefferson County Circuit Judges. This court previously affirmed the dismissal of Flint's lawsuit against those Judges. *Flint v. Shake*, No. 09-5577 (6th Cir. Dec. 30, 2009).

Chauvin filed a motion to dismiss the complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Flint's claims against him in his official capacity were barred by sovereign immunity and that Flint's claims against him in his individual capacity were barred by judicial immunity. The district court granted Chauvin's motion to dismiss, concluding that Flint's claims were barred by judicial immunity because the judge's actions were taken in the scope of the court's jurisdiction.

On appeal, Flint argues that the district court improperly concluded that Judge Chauvin was entitled to judicial immunity because the judge had violated Kentucky Supreme Court Rules and Kentucky law. Flint argues that these violations deprived the court of jurisdiction. He also argues that *Stump v. Sparkman*, 435 U.S. 349 (1978), is "terrible law" because it provides for immunity in situations where a judge should not be granted immunity.

The district court properly dismissed Flint's complaint. We review de novo a district court's dismissal

of a complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. *See Benzon v. Morgan Stanley Distrib., Inc.*, 420 F.3d 598, 605 (6th Cir. 2005). In considering a motion to dismiss under Rule 12(b)(6), the court "must accept all well-pleaded factual allegations of the complaint as true and construe the complaint in the light most favorable to the plaintiff." *Benzon*, 420 F.3d at 605 (citing *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 619 (6th Cir. 2002)). "[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 (2007). The complaint will survive a motion to dismiss if it "contain[s] sufficient factual matter, acceptable as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570).

Absolute judicial immunity attaches only to actions undertaken in a judicial capacity. *See Barnes v. Winchell*, 105 F.3d 1111, 1116 (6th Cir. 1997). Whether an act is judicial depends on the nature and function of the act, not the act itself. *Id.* In examining the functions normally performed by a judge, courts have found that judicial acts involve resolving disputes between parties who have invoked the jurisdiction of the court. *Id.*

The Supreme court has explicitly stated that a "judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." *See Stump*, 435 U.S. at 356-57. Absolute judicial immunity is overcome only when a judge engages in non-judicial actions or when the judge's actions, though judicial in nature, are taken in complete absence of all jurisdiction. *See*

Milers v. Waco, 502 U.S. 9, 11-12 (199). Neither of these circumstances exists here.

Here, Judge Chauvin engaged in conduct well within the scope of his judicial duties and within the court's jurisdiction. Although Flint has not expressly identified which improper actions the judge engaged in, it is clear that Flint challenges the judge's rulings in Flint's civil lawsuit against the condominium association. Judge Chauvin's rulings during those proceedings were taken well within a judge's purview. Contrary to Flint's argument, even if the rulings were made in error, the judge's decision is still protected by judicial immunity because the decision was made within the scope of his official duties as a judge. *See Stump*, 435 U.S. at 356-57. Finally, although Flint takes issue with the holding in *Stump*, he does not allege that the case has been overruled by the Supreme Court, and this court is bound by the precedent set forth in that case. Hence, the district court properly concluded that Judge Chauvin was entitled to judicial immunity.

Accordingly, we affirm the district court's judgment. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

Entered by Order of the Court

(s) Leonard Green
Leonard Green, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Criminal Action No. 3:10-CV-149-M

Edward H. Flint,

Plaintiff-Appellant,

v.

Judge A.C. McKay Chavin

Defendant-Appellee.

FILED - June 1, 2010

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant Judge A.C. McKay Chauvin's motion to dismiss Plaintiff Edward Flint's complaint [DN 5] and for sanctions pursuant to Fed. R. Civ. P. 11 in the form of attorney's fees and an order requiring judicial review of any new filings by the Plaintiff prior to the responsive pleading being required by the state. [Dn 7]. Fully briefed, the matter is ripe for decision.

This is Flint's fifth lawsuit in the last two years filed in the United States District Court for the Western District of Kentucky against a Jefferson County judge. Every one of the federal suits is related to rulings in two state court lawsuits Flint brought against his condominium association. In this case, Plaintiff seeks an award of "compensatory and punitive damages" as well as an order that Judge Chauvin "resign at once"

from the bench "for actions committed by Defendant in case NO. 09-CI-010478 as judge in Jefferson County Circuit Court," including "failing to perform his duty required by the Kentucky Justice System, the Kentucky Supreme Court Rules and laws of the state of Kentucky"; "den[ying]] Plaintiff his judicial rights and discrimina[ting] against him"; and "harm[ing] him when Defendant did not correctly abide by the Civil Rules of the Kentucky Court System and the laws of the state of Kentucky." (Complaint, pp. 1-3). Judge Chauvin argues that the case should be dismissed because Flint's complaint fails to state a claim for which relief can be granted, is granted by sovereign immunity, and is barred by judicial immunity.

The Court agrees that judicial immunity bars the claim. "A judge is immune, under Kentucky law, from personal liability for those acts undertaken while that judge has jurisdiction over a case. Even when jurisdiction is contrary to law, judicial immunity still applies." *City of Louisville v. Bergel*, 610 S.W.2d 292, 293 (Ky. 1980). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978); *see also Baker v. Fletcher*, 204 S.W.3d 589, 595 (Ky. 2006). Because Flint's claim in this case is based on Judge Chauvin's rulings in the state court proceeding, and because there is no allegation of any facts suggesting that Judge Chauvin acted in clear absence of all jurisdiction, Defendant's motion to dismiss is **GRANTED**.

Defendant also requests sanctions in the form of attorney's fees and an order requiring pre-responsive-pleading judicial review of Plaintiff's future filings

because "[t]his is the fifth suit against judges presiding over cases involving Mr. Flint . . . [and] enough is enough." (Defendant's Motion for Sanctions, P. 2). The Court agrees that enough is enough. However, as Judge Simpson recently noted in *Flint v. Edwards*, No. 3:09-cv-00956-CRS, *2 (W.D. Ky. May 4, 2010), an award of attorney's fees for defendants like Judge Chauvin would be an odd fit because they are represented by the Kentucky Attorney General's office and therefore have no attorney's fees. The Court also does not believe that an order requiring pre-screening of Plaintiff's future filings is warranted because what makes Flint's claims frivoulous–the failure to plead anything that might overcome judicial immunity–also makes the responsive burden on the state very slight. Accordingly, Defendant's motion for sanctions is **DENIED**. Plaintiff's cross-motion for sanctions [DN 9] is meritless and likewise **DENIED**. A Judgment will be entered consistent with this Opinion.

(s) Joseph H. McKinley, Jr., Judge
United States District Court
June 1, 2010

cc. Counsel of Record

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Criminal Action No. 3:10-CV-149-M

Edward H. Flint,

Plaintiff-Appellant,

v.

Judge A.C. McKay Chavin

Defendant-Appellee.

FILED - June 1, 2010

JUDGMENT

This matter is before the Court on a dispositive motion filed by Defendant, and the Court on this date having issued a Memorandum Opinion and Order granting the motion,

IT IS HEREBY ORDERED that judgement be entered in favor of the Defendant consistent with the Court's Memorandum Opinion and Order and the Plaintiff's Complaint be dismissed with prejudice.

(s) Joseph H. McKinley, Jr.
Joseph H. McKinley, Jr., Judge
United States District Court

cc. Counsel of Record